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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the matter of the Petition of:

ECOLOGICAL RIGHTS FOUNDATION

**FOR REVIEW OF THE CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, NORTH COAST REGION'S
FAILURE TO ACT ON THE CITY OF
EUREKA'S NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM
PERMIT APPLICATION**

**PETITION FOR REVIEW OF THE
CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD,
NORTH COAST REGION'S FAILURE
TO ACT ON THE CITY OF EUREKA'S
NATIONAL POLLUTANT
DISCHARGE ELIMINATION SYSTEM
PERMIT APPLICATION**

[Water Code §§ 13320(a) and 13321(a)]

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ECOLOGICAL RIGHTS FOUNDATION

I.

INTRODUCTION

Ecological Rights Foundation (“EcoRights”) respectfully petitions the State Water Resources Control Board (“State Board”) to review the California Regional Water Quality Control Board, North Coast Region’s (“Regional Board”) failure to act on the City of Eureka’s (“City”) National Pollutant Discharge Elimination System (“NPDES”) permit application (“Permit Application”) for the City’s operation of the Elk River Waste Water Treatment Plant (“WWTP”). The Regional Board’s failure to act has injured EcoRights and the public by depriving the City of the certainty required to implement measures needed to ensure City compliance with the Clean Water Act (“CWA”). This lack of certainty has hampered the City’s ability to take actions to address its discharges and has thus hampered EcoRights’ ability to take actions to enforce the CWA and protect Humboldt Bay from the WWTP’s sewage discharges. EcoRights requests that the State Board compel the Regional Board to comply with its mandatory duties under both federal and state law and to promptly make a determination on the Permit Application.

The City owns and operates the WWTP, which is currently operating under the terms and conditions of NPDES Permit No. CA0024449, Regional Board Order No. R1-2016-0001 (the “NPDES Permit”) and the concurrently adopted Cease and Desist Order (“CDO”) No. R1-2016-0012, as subsequently amended by Order R1-2020-0020. However, in accordance with 40 C.F.R. § 122.46(a) and California Water Code § 13380, the NPDES Permit expired in 2021. As a result, there is no current, unexpired NPDES permit addressing wastewater discharges from the WWTP.

In December 2020, prior to expiration of the NPDES Permit, the City submitted the Permit Application to the Regional Board as required by law. Despite the City’s submission of the Permit Application, EcoRights’ request for action, and the City’s repeated requests for action, the Regional Board has failed to act on the Permit Application. As discussed above, the Regional Board’s failure to act, and the resulting lack of certainty and updated measures that has resulted from that failure, has injured EcoRights and the public.

EcoRights filed a CWA citizen suit against the City alleging that the City’s WWTP

1 discharges have been failing to comply with its NPDES Permit and the CWA and have been
2 posing environmental risks. The City responded in a pro-active and cooperative way to the
3 concerns raised by EcoRights in its citizen suit and indicated a willingness to commit to
4 substantial investments to improve its WWTP and ensure its CWA compliance. However, the
5 City also pointed out, with good reason, that it cannot proceed with certainty on its investments
6 and on framing its CWA compliance measures without the Regional Board's action on the City's
7 expired NPDES Permit. The City reasonably pointed out it needs to have its CWA legal
8 obligations set by a new NPDES permit to know what measures it needs to take and plan
9 accordingly. In recognition of the City's legitimate need for Regional Board action, EcoRights
10 and the City agreed in the Consent Decree resolving EcoRights' citizen suit to pursue petitions to
11 the State Board if the Regional Board continued to fail to act on the Permit Application.

12 On November 10, 2022, in accordance with the Consent Decree, EcoRights and the City
13 asked the Regional Board to take initial action on the Permit Application (*i.e.*, release a draft
14 permit for public review) as soon as possible, and in no event later than ninety (90) days, that is,
15 no later than February 8, 2023. The Regional Board initially responded on November 23, 2022
16 stating that Regional Board staff had tentatively scheduled a public hearing on June 8-9, 2023 for
17 the Regional Board to consider the Application and reissue the City's NPDES permit. Staff
18 further stated that a Notice of Public Hearing would be posted on the Regional Board webpage
19 during the week of January 30, 2023 identifying the target Regional Board meeting and
20 describing the public hearing procedures and comment process. The Regional Board did not meet
21 the January 30, 2023 deadline.

22 On February 13, 2023, the City made one final demand for Regional Board action. It
23 informed the Regional Board that if no action was taken by February 28, 2023, the City would
24 submit a petition for review. Since no action has been taken as demanded, the City has opted to
25 file a petition to the State Board to address the Regional Board's failure to act and EcoRights has
26 likewise decided to file this Petition requesting similar relief.

27 II.

28 NAME AND ADDRESS OF PETITIONER

1 The Petitioner is Ecological Rights Foundation. The names, addresses, and contact
2 information for EcoRights are as follows:

3 Linda Sherby
4 Fredric Evenson
5 Ecological Rights Foundation
6 867 "B" Redwood Drive
7 Garberville, California, 95542
8 Telephone: (707) 923-4372
9 Email: lssherby@gmail.com and evenson@ecologylaw.com

10 EcoRights has retained the following legal counsel to represent it in this matter:

11 Christopher A. Sproul, Esq.
12 Stuart Wilcox, Esq.
13 Environmental Advocates
14 5135 Anza Street
15 San Francisco, California 94121
16 Telephone: (415) 533-3376
17 Fax: (415) 358-5695
18 E-mail: csproul@enviroadvocates.com and wilcox@enviroadvocates.com

19 III.

20 THE ACTION OR INACTION OF THE 21 REGIONAL BOARD BEING PETITIONED

22 On or about February 8, 2023, the Regional Board failed to act on EcoRights' demand for
23 Regional Board consideration of the Permit Application.

24 IV.

25 DATE THE REGIONAL BOARD FAILED TO ACT

26 In accordance with the Consent Decree, on November 10, 2022, EcoRights requested by
27 written letter that the Regional Board act. This letter asked the Regional Board to take initial
28 action on the Permit Application (*i.e.*, release a draft permit for public review) as soon as
possible, and in no event later than ninety (90) days, that is, no later than February 8, 2023.
Despite stating that it would take action before that time, the Regional Board did not take action
by that date. This failure to act remains ongoing as of submission. Therefore, EcoRights files this
Petition within thirty (30) days of the Regional Board's failure to act.

V.

1 **STATEMENT OF THE REASONS THE ACTION**
2 **WAS IMPROPER**

3 Federal and state law limit the effective term of NPDES permits to a maximum of five
4 years. 40 C.F.R. § 122.46(a) (NPDES permits “shall be effective for a fixed term not to exceed 5
5 years.”); Cal. Water Code §13380 (Regional Board is required to review and, if appropriate,
6 revise waste discharge requirements “at least every five years.”). Despite multiple requests from
7 EcoRights and the City, the Regional Board has failed to comply with its mandatory duty to
8 consider and timely act on the Permit Application. This failure to act is inconsistent with federal
9 and state law, and the State Board should compel the Regional Board to act on the Permit
10 Application as required by law.

11 **VI.**
12 **HOW PETITIONER WAS AGGRIEVED**

13 The expired NPDES Permit is the permit that the City is currently relying on to set forth
14 the requirements its WWTP discharges must meet to comply with the CWA and the California
15 Water Code. However, the NPDES Permit and the CDO were only meant to set a temporary
16 regime for regulation of the WWTP’s discharges. By failing to take action on the Permit
17 Application, the Regional Board has failed to provide updated, more permanent regulatory
18 requirements for the WWTP’s discharges. Furthermore, this failure has left the City, and
19 EcoRights, with a lack of certainty as to what actions the City is required to take to ensure its
20 compliance with the CWA and the California Water Code. The City is now under Court order in
21 EcoRights’ lawsuit to take certain actions to comply with the law, and both the City and
22 EcoRights need to know what those legal requirements are to ensure the City does so. The
23 Regional Board’s failure to act has therefore significantly harmed EcoRights, the City, and the
24 public by depriving everyone of the regulatory certainty needed for the City to move forward.

25 **VII.**
26 **ACTIONS PETITIONER REQUESTS STATE BOARD TAKE**

27 EcoRights requests that the State Board require the Regional Board to take immediate
28 action on the Permit Application. At a minimum, the State Board should compel the Regional

1 Board to release a draft permit within thirty (30) days and hold a hearing on the permit no later
2 than June 9, 2023.

3 **VIII.**

4 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION**

5 A Memorandum of Points and Authorities is filed with this Petition and is incorporated
6 herein by reference.

7 **IX.**

8 **STATEMENT OF COPIES FURNISHED**

9 A copy of this Petition has been sent to the Regional Water Quality Control Board for the
10 North Coast Region and such other parties and individuals listed on the attached proof of service.

11 **X.**

12 **STATEMENT OF ISSUES RAISED**

13 EcoRights has raised these issues before the Regional Board in the letter dated November
14 10, 2022 requesting action by February 8, 2023.

15 **XI.**

16 **CONCLUSION**

17 For the reasons set forth in this Petition and in the related documents filed herewith,
18 EcoRights respectfully requests that the State Board require the Regional Board to take
19 immediate action on the Permit Application. At a minimum, the State Board should compel the
20 Regional Board to release a draft permit to the City within thirty (30) days and hold a hearing on
21 the draft permit no later than June 9, 2023. The State Board should further direct the Regional
22 Board to issue an NPDES permit to the City promptly thereafter. Alternatively, the State Board
23 should assume authority over reissuance of the City's NPDES Permit, in which case the State
24 Board should schedule its own hearing on the draft permit no later than June 9, 2023 and
25 promptly issue an NPDES permit to the City promptly thereafter.

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Dated: March 9, 2023

Respectfully submitted,

By: /s/ Christopher Sproul
Christopher Sproul
Attorney for Ecological Rights Foundation